

**IN THE MATTER OF a complaint by
Brian Richard Nolan pursuant to the
Royal Newfoundland Constabulary
Public Complaints Regulations**

**AND IN THE MATTER OF a Public
Complaint Adjudication pursuant to the
Royal Newfoundland Constabulary
Act, 1992, R.S.N. 1990, c. R-17.**

BETWEEN:

**ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSIONER**

AND:

**CONSTABLE KRISTA (DAY) CLARKE, AND
CONSTABLE LARRY HICKEY**

DECISION

For reasons given in my decision dated 30 August 1994, I found that two (2) of the allegations against Cst. Krista (Day) Clarke and one (1) of the allegations against Cst. Larry Hickey were proven. On 2 July 1996 a hearing was conducted for the purpose of hearing submissions with respect to the appropriate disposition of these matters. Submissions were heard at that time from Counsel for the Commissioner, Counsel for the two officers and Counsel for Mr. Nolan.

Section 33(1) of the **Royal Newfoundland Constabulary Act, 1992** sets out the disposition options that are available upon a finding that allegations have been proven.

These options range in seriousness from rehabilitation programs to dismissal from the police force.

Improper Detention

Insofar as the charge of detaining Mr. Nolan without good and sufficient cause is concerned, I am satisfied that Csts. Hickey and Clarke should be treated equally. As I noted in my earlier decision, they made assumptions rather than inquiries, where inquiries were warranted. This, coupled with their lack of understanding or lack of concern for the requirements of the **Detention of Intoxicated Persons Act (D.I.P. Act)**, resulted in Mr. Nolan being unnecessarily detained and locked up for the night. This was clearly quite a traumatic event for Mr. Nolan and one that he was unable to do anything about until after the fact. Wisely, he chose not to resist the detention and escalate the situation.

Members of the public have a legitimate expectation that they will not be detained without good and sufficient reason. For this expectation to be satisfied, police officers must know understand and respect the limits of their authority to detain people. Csts. Hickey and Clarke did not live up to the standard.

It has not been suggested by counsel, nor do I believe, that the circumstances of this case justify a dismissal from the police force. As such, the disposition should focus on corrective measures, to ensure that the two constables understand that they have

serious obligations to fulfil before detaining anyone. It must be made clear that a failure to meet those obligations will have consequences. No doubt, because of the notoriety of this case, this message will become generally known among members of the Constabulary as well.

There were submissions made by counsel that part of the disposition could or should include an order that the two constables undergo a training program. While this could be helpful, there was nothing presented to suggest that there is any particular program which could address this problem. I see no purpose in ordering attendance at a program unless that program would be suitable to address the concerns. I do not think it is appropriate to leave the decision of determining the appropriateness of a program to the Chief or his delegate.

In the circumstances of this case I do not think that a reprimand is sufficient to reflect the seriousness of what happened. Deprivation of liberty is a serious matter. The authority of a police officer to detain someone is counterbalanced with the obligation to use that power only where there is good and sufficient cause. In my earlier decision I concluded that Mr. Nolan's arrest was a result of unfounded assumptions, a failure to conduct proper inquiry, a failure to pay attention to clear evidence (that it was not Mr. Nolan who was responsible for the disturbance to which the police were responding) and a failure to understand the D.I.P. Act. Csts. Hickey and Clarke failed to meet their obligations when they had full opportunity to do so.

Keeping these factors in mind, it is my conclusion that a suspension is warranted. The suspension should reflect the seriousness of the matter without being excessive. In my view a five (5) day suspension without pay is appropriate. Therefore with respect to this charge I order that Csts. Hickey and Clarke each be suspended for five (5) days without pay.

It was also submitted that I should consider ordering that the constables not be considered for promotion for a period of time. As three years have elapsed since the events occurred, I am reluctant to make that order. If there had been a promotion in the interim I would have been prepared to consider a demotion, however that is not necessary. I only add that in my view this type of disposition relates primarily to officers who are in senior or supervisory positions, and therefore could relate to Cst. Hickey but would not relate to Cst. Clarke.

Derogatory Language

With respect to the finding against Cst. Clarke for use of derogatory language, I believe that much of the analysis used above, equally applies.

It is clearly unacceptable that a police officer use such derogatory and offensive language towards a member of the public. Using such language to someone who is in custody compounds the situation. Because of the unbalance of power, the person to whom the language is directed has no real choice but to make no reaction at the


time. It must be dealt with later if anything is to be done.

Cst. Clarke should have known not to use such language, but she chose to use it. Based on my comments above, I think that a short suspension without pay is the most appropriate disposition to reflect the unacceptability of this conduct and to serve as a corrective measure. I therefore order that Cst. Clarke be suspended without pay for a further two (2) days on this charge.

CONCLUSION

It is ordered that Cst. Hickey be suspended without pay for five (5) days and that Cst. Clarke be suspended without pay for a total of seven (7) days.

DATED at St. John's in the Province of Newfoundland, this 30th day of August, 1996.



J. DAVID EATON
ADJUDICATOR